

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION – FLINT

**In re:**

**Case No. 20-30233-jda**

**Chapter 7**

**GIZA, DONALD J.,**

**Hon. Joel D. Applebaum**

**Debtor.**

**TRUSTEE’S MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS  
PURSUANT TO 11 U.S.C. §363(f) AND TRANSFERRING LIENS TO PROCEEDS**

The Chapter 7 Trustee, by and through her counsel, Collene K. Corcoran, hereby files this Motion to Sell Real Property located at 2566 Bullard Road, Hartland, Michigan 48353, free and clear of liens with all liens transferring to the proceeds of the sale pursuant to 11 U.S.C. § 363(f), Bankruptcy Rules 2002 and 6004 and LBR 6004-1.

In support of the Motion, the Trustee states as follows:

1. On January 31, 2020, the Debtor filed his voluntary Chapter 7 case.
2. Collene K. Corcoran was appointed the Chapter 7 Trustee in this case.
3. On Schedule A, the Debtor listed real estate located at 2566 Bullard, Hartland, Michigan 48353 (the “Real Estate”) with a listed value of \$275,000.00, having the following legal description:

Property located in the Township of Hartland, County of Livingston, State of Michigan, described as follows:

Lot(s) 4, Bullard Lake Woods Subdivision, according to the recorded plat thereof, as recorded in Liber 11 of Plats, Page 37.

Tax Id Number: 08-23-102-004, commonly known as 2566 Bullard Road

5. On Schedule D, the Debtor listed three debts on the Real Estate, the first mortgage to Specialized Loan Servicing in the amount of \$188,268.00, the second mortgage to Suntrust Bank in the amount of \$33,802, and the third mortgage owed to U.S. Small Business Administration in the amount of \$26,925.00.

6. On March 17, 2020, the first secured creditor Specialized Loan Servicing, LLC obtained an Order Granting Relief from the Automatic Stay which allowed the creditor to pursue its federal and state rights concerning foreclosure.

7. The Trustee employed a BK Global Real Estate Services and Auction.com and 3 Tier Real Estate LLC as listing agent to sell the Real Estate, which Order approving employment was entered by the Court on June 24, 2020.

8. The winning bid from the auction of the Real Estate was in the amount of \$238,354.00, which was accepted subject to approval of the Bankruptcy Court.

9. This sale is a short sale, approved by the first lender Specialized Loan Servicing, who will receive less than it is owed, including the funds owed to the listing agent, back taxes, closing costs and pro-rated taxes, and the carve out of funds to the estate.

10. Therefore, there will be insufficient funds to pay the two junior lienholders from this sale, and any junior mortgage holders and other liens on the Real Estate will be extinguished and discharged, and will be subordinated to general unsecured status if those creditors file a timely proof of claim with the Court and if those claims are allowed.

11. In addition, due to the short sale, because the creditor is accepting less than the amount it is owed, the Debtor is not entitled to his exemption in the Real Estate pursuant to *Brown v. Ellmann (In re Brown)*, 851 F.3d 619 (6<sup>th</sup> Cir. 2017).

12. Pursuant to this Court's Order entered on August 11, 2020, Specialized Loan Servicing has agreed to pay the estate a carve out in the amount of Five Percent (5%) of Winning Bid

plus the Listing Agent's Commission which funds shall be administered by the Trustee according to the priorities of the Bankruptcy Code.

13. Bankruptcy Code Section 363(f) provides as follows:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

14. The Trustee can satisfy Code §363(f) regarding the mortgage liens because the first secured creditor is accepting less than the amount owed and the estate is receiving a carve out in the amount of 5% of the winning bid plus the listing agent commission for unsecured creditors (the "Carve Out Funds").

15. The real estate commission will not be paid by the Bankruptcy Estate from its Carve Out Funds but will be paid by the secured creditor pursuant to this Court's Order dated June 24, 2020.

16. The Trustee is requesting approval of the sale of the Real Estate to the buyer in the amount of \$238,354.00.

17. The Trustee is selling the Real Estate "as is", with no warranties of any kind except for warranty of title, and will provide a Trustee's deed at closing.

18. The Trustee proposes to sell the Real Estate free and clear of all liens, with all liens transferring to the proceeds of the sale; however, because this is a short sale, the first mortgage holder Specialized Loan Servicing LLC agrees to accept less than the amount it is owed, and

the junior lienholders will not be paid any secured funds from the sale proceeds, but shall have an unsecured claim for the amounts owed provided that they file a timely claim and it is allowed by this Court.

19. The Trustee believes the sale is in the best interests of creditors because creditors will be paid from the Carve Out Funds according to the priorities set forth in the Bankruptcy Code.

WHEREFORE, the Chapter 7 Trustee, Collene K. Corcoran, respectfully requests that this Court enter an Order authorizing the sale under the terms proposed herein.

Respectfully submitted,

Dated: October 26, 2020

/s/ Collene K. Corcoran  
Collene K. Corcoran (P41500)  
Attorney for Chapter 7 Trustee  
PO Box 535  
Oxford, MI 48371  
(248) 969-9300  
trusteecorcoran@gmail.com

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION – FLINT

In re:

Case No. 20-30233-jda

Chapter 7

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Debtor.

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**ORDER GRANTING TRUSTEE'S MOTION TO SELL REAL PROPERTY FREE AND CLEAR  
OF LIENS PURSUANT TO 11 U.S.C. §363(f) AND TRANSFERRING LIENS TO PROCEEDS**

This matter having come before the Court on the Trustee's Motion to Sell Real Property of the Debtors Free and Clear of Liens Pursuant to 11 U.S.C. §363(f) and Transferring Liens to Proceeds and there being no objection to the Motion or all objections being resolved;

**IT IS ORDERED** that the Trustee is authorized to sell the real property located at 2566 Bullard Road, Hartland, Michigan 48353 (the "Real Estate"), free and Clear of All Liens pursuant to 11 U.S.C. §363(f), for the gross amount of \$238,354.00, said property legally described as follows:

Property located in the Township of Hartland, County of Livingston, State of Michigan, described as follows:

Lot(s) 4, Bullard Lake Woods Subdivision, according to the recorded plat thereof, as recorded in Liber 11 of Plats, Page 37.

Tax Id Number: 08-23-102-004, commonly known as 2566 Bullard Road

**IT IS FURTHER ORDERED** that the sale is "AS IS," with no warranties provided except as to title, and the Trustee shall provide a Trustee's Deed to the buyer at closing.

**IT IS FURTHER ORDERED** that Specialized Loan Servicing, LLC, the first mortgage holder, has consented to be paid less than the full mortgage balance it is owed and has consented to this sale.

**IT IS FURTHER ORDERED** that the estate shall receive Five Percent (5%) of the winning bid amount or \$11,917.70 plus the listing agent's commission (the "Carve Out Funds") which funds will be used to pay creditors according to the priorities of the Bankruptcy Code.

**IT IS FURTHER ORDERED** that all junior liens and mortgages on the Real Estate are extinguished with respect to the Real Estate and they shall not assert a secured claim on the Carve Out Funds received by the estate, but are subordinated to general unsecured claim status for any amounts owed provided they file a timely unsecured claim, and all junior mortgages and liens are deemed discharged.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION – FLINT

In re:

Case No. 20-30233-jda  
Chapter 7

GIZA, DONALD J.,

Hon. Joel D. Applebaum

Debtor.

Debtor's address: PO Box 617, Kensington, MD 20895  
Last 4 digits of SSN: xxx5212

**NOTICE OF TIME TO RESPOND TO  
TRUSTEE'S MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS PURSUANT TO  
11 U.S.C. §363(f) AND TRANSFERRING LIENS TO PROCEEDS**

The Chapter 7 Trustee, Collene K. Corcoran, has filed papers with the Court to sell the debtor's real property located at 2566 Bullard Road, Hartland, Michigan 48353, free and clear of liens, with all liens to attach to the proceeds of the sale, except that the first lienholder Specialized Loan Servicing, LLC, has agreed to accept less than the amount it is owed from the short sale. All junior liens and mortgages will be discharged, and their claims will be subordinated to general unsecured claim status for any amounts owed provided that they file a timely allowed claim with the Court. The sale is a cash sale, with no warranties or representations of any kind except as to title. The purchase price is \$238,354.00. The estate shall receive a carve out amount of 5% of the winning bid plus the listing agent commission which funds will be distributed according to the priorities set forth in the Bankruptcy Code. The Trustee believes this sale is in the best interest of creditors.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).**

If you do not want the court to authorize the Trustee's Motion to Sell Real Property Free and Clear of Liens, or if you want the Court to consider your views on the motion, **within 21 days after service of this Notice**, you or your attorney must:

1. File with the Court a written response or an answer, explaining your position at:  
**United States Bankruptcy Court  
226 West Second Street  
Flint, MI 48502**

If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

**Collene K. Corcoran, Trustee  
PO Box 535  
Oxford, MI 48371**

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

**If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion, and may enter an order granting the relief.**

Dated: October 26, 2020

Respectfully submitted,

/s/ Collene K. Corcoran  
Collene K. Corcoran (P41500)  
Attorney for Chapter 7 Trustee  
PO Box 535  
Oxford, MI 48371  
(248) 969-9300  
trusteecorcoran@gmail.com

<sup>1</sup> Response or answer must comply with F.R.Civ.P. 8(b), (c) and (e)

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**PROOF OF SERVICE**

I certify that on October 26, 2020, I electronically filed the **TRUSTEE'S MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS AND TRANSFERRING LIENS TO PROCEEDS, PROPOSED ORDER, NOTICE OF TIME TO RESPOND TO TRUSTEE'S MOTION TO SELL REAL PROPERTY AND PROOF OF SERVICE** with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Office of the United States Trustee

[paul.randel@usdoj.gov](mailto:paul.randel@usdoj.gov)

Charles J. Schneider

[notices@cschneiderlaw.com](mailto:notices@cschneiderlaw.com)

and I hereby certify that on October 26, 2020, I have mailed by U.S. Postal Service the **NOTICE OF TIME TO RESPOND TO TRUSTEE'S MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS** to the following parties:

all those on the attached matrix  
via first class US mail, postage prepaid.

/s/ Collene K. Corcoran  
Collene K. Corcoran (P41500)  
PO Box 535  
Oxford, MI 48371  
(248) 969-9300  
[trusteecorcoran@gmail.com](mailto:trusteecorcoran@gmail.com)



Label Matrix for local noticing  
0645-4  
Case 20-30233-jda  
Eastern District of Michigan  
Flint  
Mon Oct 26 15:15:05 EDT 2020

(p)BANK OF AMERICA  
PO BOX 982238  
EL PASO TX 79998-2238

Bank Of America, N.a.  
4909 Savarese Circle  
Tampa, FL 33634-2413

Consumers Energy  
PO Box 740309  
Cincinnati, OH 45274-0309

DTE Energy  
One Energy Plaza, 2120 WCB  
Lower Level  
Detroit, MI 48226-1221

DTE Energy  
P.O. Box 740786  
Cincinnati, OH 45274-0786

Ditech Financial Llc  
Po Box 6172  
Rapid City, SD 57709-6172

Gmac Mortgage  
3451 Hammond Ave  
Waterloo, IA 50702-5300

(p)JPMORGAN CHASE BANK N A  
BANKRUPTCY MAIL INTAKE TEAM  
700 KANSAS LANE FLOOR 01  
MONROE LA 71203-4774

Portfolio Recov Assoc  
120 Corporate Blvd Ste 100  
Norfolk, VA 23502-4952

Santander Consumer Usa  
Po Box 961211  
Fort Worth, TX 76161-0211

Specialized Loan Servi  
8742 Lucent Blvd  
Highlands Ranch, CO 80129-2386

Suntrust Bank  
Po Box 85526  
Richmond, VA 23285-5526

Suntrust Bank/cc 510  
Po Box 85526  
Richmond, VA 23285-5526

U.S. Small Business Admin.  
2 North 20th  
Birmingham, AL 35203-4002

Charles J. Schneider  
39319 Plymouth Rd.  
Suite 1  
Livonia, MI 48150-1064

Collene K. Corcoran  
P.O. Box 535  
Oxford, MI 48371-0535

Donald J. Giza  
PO Box 617  
Kensington, MD 20895-0617

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Bank Of America  
Po Box 982238  
El Paso, TX 79998

Jpmcb Card  
Po Box 15369  
Wilmington, DE 19850

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) Specialized Loan Servicing, LLC

(u)Patrick Butler

(u)Tracie Peltier

End of Label Matrix  
Mailable recipients 17  
Bypassed recipients 3  
Total 20